

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 94-304-W - ORDER NO. 1999-296

APRIL 22, 1999

IN RE: Application of Upstate Heater Utilities, Inc. for Approval of an Increase in its Water Rates and Charges.)))	ORDER DENYING REHEARING AND/OR RECONSIDERATION
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This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Rehearing and/or Reconsideration of our Order No. 1999-147 filed by the Commission Staff (the Staff) in this matter. Utilities of South Carolina, Inc. f/k/a Upstate Heater Utilities, Inc. (Upstate or the Company) filed a Return to the Petition. Because of the reasoning stated below, the Petition is denied.

The major allegation of the Staff Petition is that our action in allowing a 10.42% operating margin for the Company was erroneous, due to our having to follow the alleged legally and factually erroneous holding of the Circuit Court. We disagree. Although we still disagree strenuously with the Court's findings in this case, and are very concerned about the effect of the resultant rate increase on the Company's customers, we believe that our original interpretation of the Court's Order was correct, and that the Court ordered us to allow an operating margin based on the only evidence on rate of return in the record as presented by the Company, which resulted in a 10.42% operating margin. Although we agree with the Staff's statements that Company President Grantmyre recommended that the Commission set rates which resulted in an operating margin of at least 8.51% based on Heater Utilities' consolidated capital structure, or at least 11.0% using the Minnesota Power/Topeka capital structure, the Staff analysis of the Company's

rate increase request, after accounting and pro forma adjustments, and utilizing the Minnesota Power/Topeka capital structure, showed an operating margin of 10.42%, which we allowed in Order No. 1999-147, and which was specifically dictated in the Circuit Court's Order. The 10.42% was therefore derived by the Staff from the Company's presented rate of return evidence at the hearing. The 8.51% and/or 11.0% figures, while certainly presented by the Company, did not represent numbers with Staff's accounting and pro forma adjustments, said adjustments having been found appropriate by us in Order No. 1999-147. Therefore, upon analysis, although we still disagree with the Court's Order, we believe that we properly followed its dictates in our Order No. 1999-147 when we approved an operating margin that reflected Staff's adjustments, and the Minnesota Power/Topeka capital structure. This finding is also consistent with Part 3 of Upstate's response to the Staff's Petition for Rehearing and/or Reconsideration. Accordingly, we further find that we properly set rates which allow the Company the opportunity to earn a 10.42% operating margin, and reject Staff's contemporaneous allegation of error accordingly.

Again, as we noted, we still believe that the Court ordered us to allow a 10.42% operating margin in this case, and we reiterate that we will follow the Court's dictates in this matter. However, we hereby limit this holding granting this particular operating margin specifically to the facts before us in this case, pursuant to the Court's Order. We agree with the Staff when it noted that the South Carolina Supreme Court has held that the determination of a fair operating margin is peculiarly within the province of this Commission. See Seabrook Island Property Owners Association v. South Carolina Public Service Commission, 303 S.C. 493, 401 S.E. 2d 672 (1991). Therefore, we reserve the

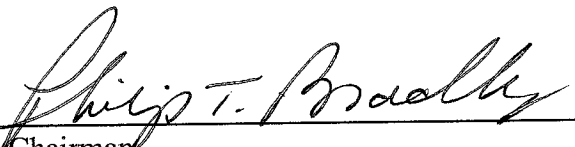
right to employ our “wide range of discretion in utility matters” to continue to examine the proper determination of an appropriate operating margin on a case-by-case basis in the future, including the possible consideration of operating margins calculated from applying accounting adjustments found in the record to determine relevant income and revenue figures. This, however, we shall leave for another day.

Because of our holdings as stated above, and our holding on the basis for denial of the relief requested in the Staff’s Petition, we see no need to discuss the other two portions of Upstate’s Return to that Petition, i.e. the parts relating to the Staff’s legal authority to Petition the Commission and/or the applicability of principles of res judicata and collateral estoppel to this particular factual situation.

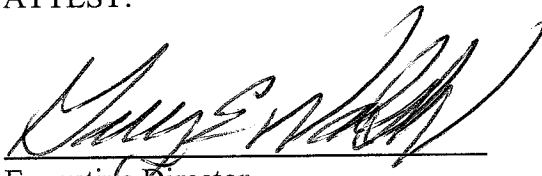
The Petition is denied.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)